

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

IN RE:

AARON VAHID SEALY, and
BAHIYYIH JYOTI SEALY,
Debtor.

Case No. 11-45065-BKC-RBR

Chapter 7 Case

AARON VAHID SEALY, and
BAHIYYIH JYOTI SEALY,

Plaintiff,

Adv. No. 12-01218-BKC-RBR-A

vs.

U.S. DEPARTMENT OF EDUCATION,
EDUCATIONAL CREDIT MANAGEMENT
CORPORATION, and
UNIVERSITY OF MICHIGAN,

Defendants.

**JOINT MOTION FOR ENTRY OF STIPULATED JUDGMENT
AS TO DISCHARGEABILITY OF PLAINTIFF BAHIIYYIH
SEALY'S STUDENT LOAN DEBT OWED TO ECMC**

Defendant Educational Credit Management Corporation ("ECMC"), and Plaintiffs Aaron Vahid Sealy ("Mr. Sealy") and Bahiyyih Jyoti Sealy ("Mrs. Sealy", collectively with Mr. Sealy, the "Plaintiffs") respectfully request the Court enter the Stipulated Judgment attached hereto as **Exhibit "A"**, which represents a resolution of the Plaintiffs' claims against ECMC set forth in the Plaintiffs' *Amended Complaint to Determine Dischargeability of Debt* [ECF# 17]. In support thereof, Plaintiffs and ECMC state as follows:

Background

1. The Plaintiffs filed a joint chapter 7 petition on December 27, 2011. In the petition, the Plaintiffs disclosed significant student loan obligations and a collective yearly gross income at or below the federal poverty line for at least two years preceding the filing of the chapter 7 petition.

2. On January 30, 2012, the Chapter 7 Trustee issued his Report of No Distribution [ECF# 13].

3. On March 13, 2012, the Plaintiffs commenced the instant adversary proceeding by filing the *Complaint to Determine Dischargeability of Debt* (the "Complaint") against originally named defendants Sallie Mae and the U.S. Department of Education. In the Complaint, the Plaintiffs requested a discharge of the Plaintiffs' respective student loan debt under 11 U.S.C. § 523(a)(8).

4. On April 19, 2012, the Court entered an Order [ECF# 26] discharging the Plaintiffs under 11 U.S.C. § 727.

5. On May 1, 2012, the Plaintiffs filed their *Amended Complaint to Determine Dischargeability of Debt* (the "Amended Complaint") [ECF #17]. The Amended Complaint added the University of Michigan as a defendant and updated certain other factual representations, but requested the same relief as the original Complaint.

6. The Stafford Loans that Mrs. Sealy obtained that are the subject, in part, of the Amended Complaint were made pursuant to the FFELP ("Mrs. Sealy's FFELP Loans"). The original lenders of eight (8) of Mrs. Sealy's FFELP Loans were National City Bank (4 of them and JP Morgan Chase Bank, NA (4 of them), and the original lender for the remaining two (2) loans was Bank One EFC.

7. Because federal regulations prohibit lenders of FFELP loans from holding interests in student loans that are subject to a bankruptcy case or an adversary proceeding, claims were filed under Mrs. Sealy's FFELP Loans' guaranties with the guarantor Michigan Higher Education Assistance Authority ("MHEEA"). Sallie Mae, Inc. on behalf of MHEEA filed three proofs of claim against the Plaintiff's estate, totaling \$36,064.43 in general unsecured claims.

8. ECMC is also a guarantor in the FFELP and acts as a specialized guarantor in that it accepts assignment from other guaranty agencies in the FFELP where a borrower has filed for bankruptcy and/or has initiated an adversary proceeding regarding the student loan debt owed. By agreement, MHEEA assigns to ECMC for defense its loans that are subject to an adversary proceeding. By an Order [ECF# 25] dated June 21, 2012, ECMC was substituted as a party defendant with respect to Mrs. Sealy's FFELP Loans.

9. On July 6, 2012, ECMC filed its Answer [ECF# 31] to the Amended Complaint and denied that Plaintiffs were entitled to an undue hardship discharge.

Relief Requested

10. After the commencement of this adversary, counsel for ECMC advised counsel for Plaintiffs about various programs that are available with respect to the FFELP student loans that Mrs. Sealy owes to ECMC. Included in their discussions was the possibility of resolving the issues between Mrs. Sealy and ECMC at issue in this adversary proceeding through Mrs. Sealy's consolidation of her loans in the William D. Ford Direct Loan Consolidation Program ("Ford Program"), and repayment through the Income Based Repayment ("IBR").

11. Counsel for ECMC and the Plaintiffs also discussed negotiating a partial discharge of Mrs. Sealy's loans as part of a resolution of this adversary.

12. As a result of these discussions, the Plaintiffs and ECMC have agreed to resolve the issues between them by agreeing to a partial discharge of Mrs. Sealy's loans. Of the total amount of student loan debt that Mrs. Sealy currently owes to ECMC, \$29,500.00 would not be dischargeable under 11 U.S.C. §523(a)(8) (the "Non-Dischargeable Balance"). Thus, any amounts exceeding \$29,500.00 that are owed to ECMC would be dischargeable under 11 U.S.C. §523(a)(8).

13. Mrs. Sealy shall be entitled to apply to consolidate the Non-Dischargeable Balance of her FFELP loans, (plus any accruing interest) into the Ford Program, and to seek repayment under the IBR or any other available program.

14. Mrs. Sealy's loans will be repurchased by the original lenders after entry of a stipulated judgment. When ECMC initiates the repurchase by the original lenders, ECMC will certify the Non-Dischargeable Balance as \$29,500.00 plus any interest that has accrued pursuant to paragraph 13 *supra*.

15. ECMC has agreed to provide Mrs. Sealy the prepopulated forms to apply to the Ford Program once the repurchase of her loans from ECMC is complete. ECMC will also notify the Plaintiffs when Mrs. Sealy's loans have been repurchased from ECMC by her original lenders.

16. Because this matter is being submitted on a joint basis, Plaintiffs and ECMC do not believe that a hearing is necessary on this Joint Motion. A proposed Stipulated Judgment is attached hereto as **Exhibit "A"**.

[INTENTIONALLY LEFT BLANK]

WHEREFORE, ECMC and Plaintiffs jointly request that the Court enter the Stipulated Judgment, and granting them such other and further relief as the Court deems necessary and proper.

Dated: August 16, 2012

Respectfully submitted,

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By: /s/ John D. Eaton

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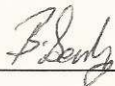
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BERGER SINGERMAN LLP

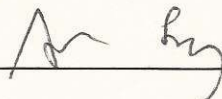
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By: /s/ Alisa Paige Mason

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By: **Bahiyih Jyoti Sealy**



By: **Aaron Sealy**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Motion was served via CM/ECF transmission on this 16th day of August, 2012 upon: John Eaton, Esq., 283 Catalonia Avenue, Second Floor, Coral Gables, Florida 33134, and Grisel Alonso, Esq., Asst. U.S. Attorney, 99 NE 4th St., Suite 300, Miami, Florida 33132; and via electronic transmission and first class, U.S. Mail upon Debra Kowich, Esq., Central Campus Legal Office, Fleming Building, 503 Thompson Street, Ann Arbor, Michigan.

By: /s/ Alisa Paige Mason

Alisa Paige Mason

From Article at GetOutOfDebt.org

EXHIBIT "A"

From Article at GetOutOfDebt.org

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SOUTHERN DISTRICT OF FLORIDA
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vs.

U.S. DEPARTMENT OF EDUCATION,
SLM CORPORATION a/k/a SALLIE MAE,
and UNIVERSITY OF MICHIGAN,

Defendants.

**STIPULATED JUDGMENT AS TO DISCHARGEABILITY OF PLAINTIFF BAHIIYYIH
SEALY'S STUDENT LOAN DEBT OWED TO ECMC**

THIS CAUSE having come before the Court on the *Joint Motion for Entry of Stipulated Judgment as to Dischargeability of Plaintiff Bahiyyih Sealy's Student Loan Debt Owed to ECMC*

(the “Motion”)[ECF# ____] filed by Plaintiff Bahiyyih Jyoti Sealy (“Mrs. Sealy”) and Defendant Educational Credit Management Corporation (“ECMC”) (collectively, the “Parties”), and the Court, having reviewed the Joint Motion, being advised by the Parties that they have resolved the issues as to Mrs. Sealy’s student loan debt owed to ECMC that were raised in the *Amended Complaint to Determine Dischargeability of Debt* [ECF# 17], and to the entry of this stipulated Judgment, good cause appearing, and being otherwise duly advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. Of the total amount of student loan debt that Mrs. Sealy currently owes to ECMC, \$29,500.00 (the “Non-Dischargeable Balance”) is not dischargeable under 11 U.S.C. §523(a)(8). Therefore, final judgment of non-dischargeability is hereby entered in favor of ECMC as to \$29,500.00 of Mrs. Sealy’s student loan debt.

2. The remaining balance, including principal or interest, of Mrs. Sealy’s student loan debt owed to ECMC that is in excess of the Non-Dischargeable Balance is dischargeable under 11 U.S.C. §523(a)(8), and that remaining balance shall be the subject of the general discharge that Mrs. Sealy received on April 19, 2012. Therefore, final judgment of dischargeability is hereby entered in favor of Mrs. Sealy as to the amount of her student loan debt that is in excess of the Non-Dischargeable Balance.

3. Interest on the Non-Dischargeable Balance shall begin to accrue and will continue to accrue at the contract interest rates as of the date this Agreed Judgment is entered on the docket.

4. The Non-Dischargeable Balance remains eligible for administrative debt repayment and forgiveness programs, including but not limited to, the income-based repayment or

income contingent repayment options available in the William D. Ford Direct Loan Consolidation Program (the “Ford Program”).

5. Mrs. Sealy’s student loans will be repurchased by the original lenders after the entry of this Agreed Judgment. When ECMC initiates repurchase by the lenders, ECMC will certify Mrs. Sealy’s balance as \$29,500.00 plus any interest that has accrued pursuant to paragraph 3 *supra*.

6. ECMC will notify the Plaintiffs when Mrs. Sealy’s loans have been repurchased from ECMC by Mrs. Sealy’s original lenders.

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Submitted by:

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Copies furnished to:

John D. Eaton, Esq.
Alisa Paige Mason, Esq.
Grisel Alonso, Esq.
Debra Kowich, Esq.

(Attorney Mason shall serve a conformed copy of this Order upon all interested parties, and file a Certificate of Service with the Court).